

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 99-0430**

**Adjusted Gross Income Tax**

Calendar Years Ending 12/31/95 and 12/31/96

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**ISSUE(S)**

**I. Adjusted Gross Income Tax – Michigan Single Business Tax**

**Authority:** I.C.6-3-1-3.5 (b); 45 IAC 3.1-1-8 (3)(a); *First Chicago NBD Corp. v. Department of State*, 708 N.E.2d 631 (Ind. Tax Court 1999)

Taxpayer protests the add back of the Michigan Single Business Tax.

**II. Tax Administration – Penalty**

**Authority:** IC 6-8.1-10.1; 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

Taxpayer, in a letter dated May 13, 1999 protested the add back of the Michigan Single Business Tax in an audit completed on January 15, 1999. Taxpayer is a Michigan corporation qualified to do business in Indiana in February 1993.

**I. Adjusted Gross Income Tax – Michigan Single Business Tax**

**DISCUSSION**

At issue is whether the taxpayer is subject to the add back of the Michigan Single Business Tax.

The Indiana Tax Court in *First Chicago NBD Corp. v. Dept. of State Revenue*, 708 N.E.2d 631 (Ind. Tax Court 1999) has recently decided that the Michigan Single Business Tax is not based on or

measured by income. Consequently, MSBT is not a required add back in arriving at Indiana Adjusted Gross Income.

### **FINDINGS**

Taxpayer's protest is sustained.

### **II. Tax Administration** - Penalty

### **DISCUSSION**

Taxpayer protests the imposition of the ten percent (10%) negligence penalty but did not provide reasonable cause. The negligence penalty imposed under IC 6-8.1-10-2.1 may be waived by the Department where reasonable cause for the deficiency has been shown by the taxpayer. Specifically:

The department shall waive the negligence penalty imposed under IC 6-8.1-10-2.1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. 45 IAC 15-11-2(c).

Although the Michigan Single Business Tax has been sustained in taxpayer's favor, the department finds that the taxpayer was negligent in failing to account for sales shipped into Indiana for income tax purposes. The error resulted in almost fourteen percent (14%) of the apportionment factor in 1995 and 1996. In 1995, the only year with an assessment, the errors made on the return still netted tax due of over fifty percent (50%) after adjustment of the MSBT.

### **FINDING**

Taxpayer's protest is denied.

### **CONCLUSION**

The taxpayer's protest is sustained with respect to Issue I and denied with respect to Issue II.